

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JULIUS PHILLIPS,

Plaintiff,

-v-

1:22-CV-833

BRUCE J. WAGNER, REILLY  
DYLION, and REBECCA BAUSCHER,

Defendants.  
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APPEARANCES:

OF COUNSEL:

JULIUS PHILLIPS  
Plaintiff, Pro Se  
800 State Street, Apt. 105  
Schenectady, NY 12307

DAVID N. HURD  
United States District Judge

**ORDER ON REPORT & RECOMMENDATION**

On August 10, 2022, *pro se* plaintiff Julius Phillips (“plaintiff”) filed this action alleging that defendants violated his rights in connection with a New York State Family Court child support proceeding. Dkt. No. 1. Although this matter was initially closed due to plaintiff’s failure to pay the filing fee, Dkt. No. 2, the Clerk of the Court reopened the case after plaintiff sought leave to proceed *in forma pauperis* (“IFP Application”). Dkt. Nos. 3, 4.

On November 4, 2022, U.S. Magistrate Judge Miroslav Lovric granted plaintiff's IFP Application and advised by Report & Recommendation ("R&R") that the complaint be dismissed without prejudice, but without leave to amend. Dkt. No. 5. As Judge Lovric explained, better pleading could not cure a fundamental jurisdictional defect that arose based on the set of facts alleged; *i.e.*, clear precedent demonstrated that state judicial officers and others acting as arms of the state court are generally immune from suit under § 1983. *Id.* As for plaintiff's claims against a private attorney who appeared before the state court, Judge Lovric correctly noted that private actors generally cannot be sued under § 1983. *Id.*

Plaintiff has filed objections. Dkt. No. 7. Upon *de novo* review, the R&R will be accepted and adopted in all respects. *See* 28 U.S.C. § 636(b)(1)(C).

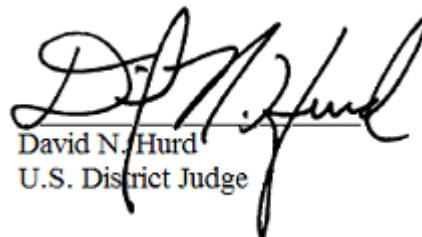
Therefore, it is

ORDERED that

1. The Report & Recommendation is ACCEPTED; and
2. Plaintiff's complaint is DISMISSED without prejudice and without leave to amend for lack of subject matter jurisdiction.

IT IS SO ORDERED.

Dated: December 2, 2022  
Utica, New York.



David N. Hurd  
U.S. District Judge